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SUBJECT: 2007 SPECIAL 301 CZECH REPUBLIC OCR RESULTS

REF: PRAGUE 849, PRAGUE, 1228, STATE 1484761

11. This is an ACTION REQUEST. The USG Special 301 Committee has concluded its deliberations regarding the Czech Republic's status on the Special 301 list following the Out-of-Cycle Review (OCR). The Office of the U.S. Trade Representative (USTR) will announce that the Czech Republic has been placed on the Special 301 Watch List. Post is requested to use the information in Paragraph 4 to provide the host government with advance notice of the conclusion of the review and of the impending announcement. Post may leave behind the points in paragraph 4 as a non-paper. Washington prefers that points be delivered orally/in person. END ACTION REQUEST.

BACKGROUND

12. Each Spring USTR issues the Special 301 Report to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. The USG Special 301 Committee conducted an OCR for the Czech Republic before the start of the regular 2008 annual review.

13. The Spring 2007 decision to conduct an OCR for the Czech Republic was intended to provide time for the Czech Government to demonstrate concrete improvements to its IPR regime, especially with respect to copyright and trademark enforcement, to avoid a Special 301 Watch List designation. In the 2007 Special 301 Report released in April 2007 and in subsequent interactions with the Czech Government, the USG noted its concern with the rapidly growing open-air border markets selling large volumes of pirated and counterfeit goods.

ISSUES TO DISCUSS

14. Special 301 results for the Czech Republic: We request that Embassy Prague raise the following in its discussion with host government officials.

-- The USG has completed its IPR Out-of-Cycle Review and has decided to put the Czech Republic on the Special 301 Watch List for inadequate IPR enforcement at the border markets. USTR is set to announce this decision on the USTR website during January 2008. The Czech Republic's status on the Watch List will take effect immediately upon the announcement by USTR.

-- The Czech Republic narrowly missed being placed on the Watch List in April 2007, despite strong pressures from U.S. industry. The decision was based on USG assessment that the Czech Government must be given an opportunity to make significant progress in addressing IPR violations at the border markets.

-- Since April 2007, the USG has been monitoring Czech progress in reducing the sale of pirated and counterfeit goods at its border markets over the past nine months. Despite taking some steps, including the formulation of an IPR Action Plan, the Czech Government has not meaningfully implemented the Action Plan nor reduced the sale of pirated and counterfeit goods available at these markets. The IPR violations at the border markets originally noted by the recording industry continue relatively free from prosecution and deterrent sentencing, and therefore, the border markets have grown in size and prominence.

-- The Czech Government needs to do more than simply play a high-level coordination role. The U.S. Government believes the Czech Government should take more ownership of the issue in order for the IPR Action Plan to be implemented quickly and effectively. The U.S. Government presented a suggested action plan to the Czech Government that included steps necessary to combat piracy and counterfeiting at the markets, and provided comments to the Czech Government on its own action plan to strengthen it and address all areas needing improvement.

-- As the 2008 annual review begins, we urge the Czech Government to submit a statement for the Special 301 review. The due date for government submissions to USTR will be February 29, 2008. In this submission, it would be useful to the U.S. Government if the Czech Government can describe progress it has made to implement the elements of its October 3, 2007 Action Plan.

-- We also encourage the Czech Government again to consider some additional elements from the U.S. Government plan submitted in May 2007, as discussed in our October meeting. Specifically, we would like to see (1) an increased/sustained enforcement presence at the markets, (2) landlord liability legislation and revocation of business licenses for IPR violators, and (3) concrete timelines for implementation of the items in the action plan.

-- The U.S. Government remains open to convening a videoconference with the Czech Government or meeting in person (if possible in Washington, D.C.) to discuss the Watch List designation and our expectations for the upcoming 2008 Special 301 annual review. The April 2008 Special 301 Report will be an opportunity for the Czech Republic to be removed from the Watch List, and the United States is ready to work together with the Czech Republic towards that goal.
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